

### § 1210.13

(d) *Limits on discovery requests.* Absent approval by the administrative judge, discovery is limited as follows:

(1) Interrogatories may not exceed 10 in number, including all discrete subparts;

(2) The parties may not take depositions; and

(3) The parties may engage in only one round of discovery.

(e) *Administrative judge's discretion to alter discovery procedures.* An administrative judge may alter discovery procedures in order to provide for the expedited review of an appeal filed under this part.

### § 1210.13 Deadlines for filing motions.

(a) *Motions.* All non-discovery motions must be filed no later than 5 days after the initial status conference.

(b) *Objections.* Objections to motions must be filed no later than 2 days after the motion is filed.

(c) *Administrative judge's discretion to alter deadlines.* An administrative judge may exercise discretion to alter or waive these deadlines.

### § 1210.14 Sanctions for failure to meet deadlines.

Section 1201.43 of this chapter, which allows administrative judges to impose sanctions on parties that do not comply with orders or do not file pleadings in a timely fashion, shall apply to any appeal covered by this part. Strict enforcement of deadlines will be required to meet the 21-day deadline for issuance of a decision by the administrative judge.

### § 1210.15 Agency duty to assist in expedited review.

(a) As required by 38 U.S.C. 713(e)(6), the agency is required to provide the administrative judge such information and assistance as may be necessary to ensure that an appeal covered by this part is completed in an expedited manner.

(b) The agency must promptly notify the MSPB whenever it issues a Secretarial determination subject to appeal under this part. Such notification must include the location where the employee worked, the type of action taken, and the effective date of the ac-

### 5 CFR Ch. II (1–15 Edition)

tion. Notification should be sent to [VASES@mspb.gov](mailto:VASES@mspb.gov).

### § 1210.16 Intervenors and amici curiae.

Intervenors and amici curiae are permitted to participate in proceedings under this part as allowed in § 1201.34 of this chapter. Motions to intervene and requests to participate as an amicus curiae must be filed at the earliest possible time, generally before the initial status conference. All intervenors and amici curiae must comply with the expedited procedures set forth in this part and all orders issued by the administrative judge. The deadlines applicable to the timely adjudication of cases under this part will not be extended to accommodate intervenors or amici curiae.

### § 1210.17 Hearings.

(a) *Right to a hearing.* An appellant has a right to a hearing as set forth in 5 U.S.C. 7701(a).

(b) *General.* Hearings may be held in person, by video or by telephone at the discretion of the administrative judge.

(c) *Scheduling the hearing.* The administrative judge will set the hearing date during the initial status conference. A hearing generally will be scheduled to occur no later than 18 days after the appeal is filed.

(d) *Length of hearings.* Hearings generally will be limited to no more than 1 day. The administrative judge, at his or her discretion, may allow for a longer hearing.

(e) *Court reporters.* The MSPB will contract for a court reporter to be present at hearings.

### § 1210.18 Burden of proof, standard of review, and penalty.

(a) *Agency.* Under 5 U.S.C. 7701(c)(1), and subject to exceptions stated in paragraph (c) of this section, the agency (the Department of Veterans Affairs) bears the burden of proving that an appellant engaged in misconduct, as defined by 38 U.S.C. 713(g)(2), or poor performance, and the Secretary's determination as to such misconduct or poor performance shall be sustained only if the factual reasons for the